

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T-17493
January 28, 2016**

R E S O L U T I O N

RESOLUTION T-17493. Approves the transfer of control and acquisition of IBFA Acquisition Company, LLC (IBFA) (U-6961-C) by First Choice Technology, Inc. (First Choice) (U-6948-C), approves IBFA's proposed methodology to estimate past unpaid public purpose program surcharges and user fees owed, and charges IBFA interest for late surcharge remittances.

SUMMARY

This resolution approves the transfer of control and acquisition of IBFA Acquisition Company, LLC (IBFA) (U-6961-C) by First Choice Technology, Inc. (First Choice) (U-6948-C), and approves the methodology First Choice Technology used for estimating IBFA's past unpaid public purpose program surcharges and user fees. In accordance with General Order 153 at Section 9.8.6, unpaid surcharges are subject to a 10% interest rate for late remittance.

BACKGROUND

Both IBFA and First Choice received licenses to operate in California in 2005. In Decision (D.) 05-07-034, issued July 21, 2005, the Commission granted IBFA a certificate of public convenience and necessity (CPCN) to Provide Resold and Limited Facilities-Based Local Exchange and Interexchange Telecommunications Services. Then, in D.05-05-021, issued May 13, 2005, the Commission granted First Choice a registration license to provide switchless reseller services. Lastly, PU Code §854 establishes a threshold of over \$500,000,000. Both carriers' gross annual revenue is less than this amount.

On March 19, 2015, First Choice filed Advice Letter (AL) #7 seeking Commission approval to acquire IBFA. The AL appeared on the Commission's Daily Calendar on March 25, 2015. There were no protests filed on the AL.

In its AL, First Choice reported that a receiver seized IBFA in 2014. When the receiver took over IBFA, it was discovered that not only had IBFA not paid user fees for the period prior to its being placed under receivership (2011 through 2013), but it also had no financial records for January 2013 - May 2014. Consequently, First Choice asserted

that IBFA did not have any actual financial data to support its user fee and surcharge reports and thus, had not filed the necessary reports with the Commission.

The Commission collects and distributes funds to support six public purpose programs for the benefit of California ratepayers. These programs are mandated by Public Utilities (P.U.) Code §§ 270-278.5 and §§ 280-281. Funds to support these programs are collected from end users (ratepayers) as surcharges based on intrastate revenue, which carriers remit to the Commission through its Telecommunications User Fees Filing System (TUFFS). The Commission requires all pre- and postpaid landline, cellular, Voice over Internet Protocol and reseller carriers authorized to provide service in California to collect and remit surcharges for the following six universal service programs: California High-Cost Fund A (CHCF-A), California High-Cost Fund B (CHCF-B), Universal Lifeline Telephone Service (ULTS), Deaf and Disabled Telecommunications Program (DDTP), California Teleconnect Fund (CTF), and California Advanced Services Fund (CASF).

Additionally, P.U. Code §§ 401 and 402 authorize the Commission to collect Public Utilities Commission Reimbursement Fees (user fees) from customers through the carriers' billings¹ to fund the Commission's operating budget.

Pursuant to G.O.96-B, Telecommunications Industry Rule 8.6.2, the proposed transferee may request Commission approval for the transfer of an interexchange carrier or competitive local carrier by advice letter.² Such a request for transfer of control may be made through the advice letter process instead of via application as long as the acquiring entity is either an already certificated telecommunications carrier or the parent of a presently certificated carrier, and none of the parties has gross annual California revenues in excess of \$500 million, pursuant to §§ 854 (b) and (c).

A condition for the approval of the transfer of control is that both carriers must be current with user fee and surcharge reporting and remittances.

DISCUSSION

In reviewing this Advice Letter filing, CD staff confirmed that IBFA went into receivership in 2014. Pursuant to an Order of the Circuit Court of Cook County, Illinois, a Receiver was authorized to enter into a Bill of Sale transferring IBFA's long distance assets, including customer accounts, to First Choice. The Court Order was included in the AL filing.

First Choice is in good standing with the Commission. CD staff has confirmed that First Choice has been compliant with Commission rules covering the remittance of past user

¹ VoIP providers are not required to collect and remit CPUC user fees. See P.U. Code § 285.

² See D.94-05-051. Add to this cite – where in the decision?

fees and surcharges owed through the present and with the Initial and Annual Performance Bond filing requirements. However, IBFA indeed did not pay user fees for 2011 to 2015 and owes surcharges from February 2013 to the present.

Given the reported lack of financial records to determine the user fee and surcharge amounts IBFA owes, First Choice proposed the following:

1. **For user fees:** First Choice will pay the user fees IBFA owes. Since IBFA has financial records for 2011-2012, the user fees for 2011-2012 shall be calculated based on 0.18% of its actual intrastate billing amounts. For the period 2013-2015, First Choice suggested using December 2012 actual intrastate revenue as a surrogate to calculate the IBFA user fees for the period February 2013-May 2014 since IBFA does not have financial records for that timeframe. Pursuant to D.13-05-035, IBFA will pay the minimum \$100 annual user fee amount since 0.18% of the December 2012 intrastate revenue is less than \$100 per year.³
2. **For surcharges:** First Choice again suggested using December 2012 actual financial data as a surrogate to calculate the IBFA surcharge amounts for the period February 2013-May 2014 since IBFA does not have financial records for that timeframe. As IBFA has financial records for the period from June 2014 - Present, First Choice suggested using actual financial data for that timeframe to calculate the surcharge amounts owed for the period June 2014 to the present.

CD's review of the proposal of First Choice looked at whether December 2012 data would be a reasonable surrogate figure for the period February 2013 - May 2014 in that the estimated revenues are not understated. CD found:

1. The reported December 2012 intrastate revenue of \$1,765 is close to the average historical amounts reported for the 12 months from January - December 2012. The average historical amount reported during that period is approximately \$2,000.
2. The reported December 2012 intrastate revenue of \$1,765 is greater than intrastate revenues reported from June 2014 to October 2015.
3. Historical reports submitted for the period May 2010 - January 2013 show the average total historical surcharge amount based on actual financial figures is approximately \$50 per month. Using the actual intrastate revenue reflected in the IBFA draft surcharge reports for June 2014 through October 2015, the average monthly surcharge amount for each month is approximately \$50.

Based on these findings, CD staff concluded that the proposed intrastate revenue surrogate and the resulting surcharge amounts are in line with what IBFA had paid in the past. Therefore, December 2012 data provides a reasonable benchmark for the

³ D.13-05-035 requires that CPCN holders and wireless registrants shall pay the User Fee annually based on the Commission-established rate in effect at the time (currently 0.18% of gross intrastate revenue) or \$100, whichever is greater.

months for which actual financial data is missing (i.e. February 2013 to May 2014). Moreover, CD concurs that for the period after May 2014 to present, IBFA's actual financial data should be used.

Thus, IBFA owes the Commission \$1,993.81 in unpaid surcharges through October 2015 (\$1,721.30 in surcharges plus 10% interest in the amount of \$272.51) and \$323.77 in unpaid user fees for the period 2011-2015. In addition, IBFA also owes the Commission for unpaid surcharges plus interest for the period from November 2015 to the present and for user fees for 2016. CD recommends that IBFA pay the outstanding user fee amounts due and outstanding surcharge amount due plus interest, within 30 days of the effective date of this resolution. If payment is not received within 30 days, then additional interest will accrue.

IBFA should submit its surcharge amount due plus interest via the TUFFS system.

To pay the total user fee amount due from 2011-2015 of \$323.77, plus the total user fee amount for 2016, IBFA should submit a check or money order payable to the California Public Utilities Commission and delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Cashiering Unit, San Francisco, CA 94102.

CD considers First Choice's proposal to be reasonable, and recommends that the Commission approve First Choice's acquisition of IBFA contingent on payment of past unpaid surcharges and fees.

CONCLUSION

The Commission finds that CD staff employed a reasonable review of First Choice's proposal using all available financial records available. Thus, we approve the transfer of control of IBFA to First Choice subject to the remittance of all unpaid user fees and surcharges owed by IBFA. The Commission reminds First Choice's officers that carriers have a statutory obligation under PU Code Section 451 to keep adequate records to justify rates charged. Given the unique circumstances here involving IBFA we will allow a one-time accommodation for this deficiency.

SAFETY CONSIDERATIONS

This resolution bears no significant impact on safety issues. However, the additional surcharge and user fee revenue paid to support Commission programs positively impacts the provision of access to quality telecommunications service which supports public safety.

COMMENTS

In compliance with Public Utilities Code § 311(g), a notice letter was e-mailed on December 28, 2015, informing parties on the service list of Advice Letter # 7 of the availability of the draft of this resolution for public comments at the Commission's website at <http://www.cpuc.ca.gov/PUC/documents/>. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at this same website. CD did not receive any comments or reply comments on this resolution.

FINDINGS

1. Both IBFA and First Choice received licenses to operate in California in 2005. In Decision (D.) 05-07-034, issued July 21, 2005, the Commission granted IBFA a certificate of public convenience and necessity (CPCN) to Provide Resold and Limited Facilities-Based Local Exchange and Interexchange Telecommunications Services. Then, in D.05-05-021, issued May 13, 2005, the Commission granted First Choice a registration license to provide switchless reseller services.
2. PU Code §854 establishes a threshold of over \$500,000,000. Both carriers' gross annual revenue is less than this amount.
3. On March 19, 2015, First Choice filed Advice Letter (AL) #7 seeking Commission approval to acquire IBFA. The AL appeared on the Commission's Daily Calendar on March 25, 2015. There were no protests filed on the AL.
4. In reviewing this Advice Letter filing, CD staff confirmed that IBFA went into receivership in 2014. Pursuant to an Order of the Circuit Court of Cook County, Illinois, a Receiver was authorized to enter into a Bill of Sale transferring IBFA's long distance assets, including customer accounts, to First Choice. The Court Order was included in the AL filing.
5. First Choice is in good standing with the Commission. CD staff has confirmed that First Choice has been compliant with Commission rules covering the remittance of past user fees and surcharges owed through the present and with the Initial and Annual Performance Bond filing requirements. However, IBFA indeed did not pay user fees for 2011 to 2015 and owes surcharges from February 2013 to the present.
6. First Choice will pay the user fees IBFA owes. Since IBFA has financial records for 2011-2012, the user fees for 2011-2012 shall be calculated based on 0.18% of its actual intrastate billing amounts. For the period 2013-2015, First Choice suggested using December 2012 actual intrastate revenue as a surrogate to calculate the IBFA user fees for the period February 2013-May 2014 since IBFA does not have financial records for that timeframe. Pursuant to D.13-05-035, IBFA will pay the minimum \$100 annual user fee amount since 0.18% of the December 2012 intrastate revenue is less than \$100 per year.

7. First Choice again suggested using December 2012 actual financial data as a surrogate to calculate the IBFA surcharge amounts for the period February 2013-May 2014 since IBFA does not have financial records for that timeframe. As IBFA has financial records for the period from June 2014 - Present, First Choice suggested using actual financial data for that timeframe to calculate the surcharge amounts owed for the period June 2014 to the present.
8. CD staff concluded that the proposed intrastate revenue surrogate and the resulting surcharge amounts are in line with what IBFA had paid in the past. Therefore, December 2012 data provides a reasonable benchmark for the months for which actual financial data is missing (i.e. February 2013 to May 2014). Moreover, CD concurs that for the period after May 2014 to present, IBFA's actual financial data should be used.
9. IBFA owes the Commission \$1,993.81 in unpaid surcharges through October 2015 (\$1,721.30 in surcharges plus 10% interest in the amount of \$272.51) and \$323.77 in unpaid user fees for the period 2011-2015. In addition, IBFA also owes the Commission for unpaid surcharges plus interest for the period from November 2015 to the present and for user fees for 2016. CD recommends that IBFA pay the outstanding user fee amounts due and outstanding surcharge amount due plus interest, within 30 days of the effective date of this resolution. If payment is not received within 30 days, then additional interest will accrue.
10. CD considers First Choice's proposal to be reasonable, and recommends that the Commission approve First Choice's acquisition of IBFA contingent on payment of past unpaid surcharges and fees.
11. CD did not receive any comments or reply comments on this resolution.

THEREFORE, IT IS ORDERED that:

1. The Commission authorizes IBFA to use December 2012 data as a substitute to estimate the surcharges owed to the Commission for the period of time between February 2013 and May 2014, for which financial data is not available. IBFA must use actual financial data based on records from the period June 2014 - Present to remit surcharges for June 2014 - Present.
2. IBFA Acquisition Company, LLC (IBFA) must pay its outstanding obligation of owed user fees for the period between 2011 - Present within 30 days of the effective date of this resolution. If payment is not received within 30 days, then additional interest will accrue. IBFA must remit \$323.77 in unpaid user fees for the period 2011-2015. In addition, IBFA must also remit user fees for 2016.

3. IBFA must pay its outstanding obligation of owed surcharges for the period February 2013 – Present within 30 days of the effective date of this resolution. If payment is not received within 30 days, then additional interest will accrue. IBFA must remit \$1,993.81 in unpaid surcharges for the period between February 2013 - October 2015 (\$1,721.30 in unpaid surcharges plus \$272.51 in interest). In addition, IBFA must also remit unpaid surcharges plus interest for the period from November 2015 to the present.
4. The transfer of control and acquisition of IBFA Acquisition Company, LLC (U-6961-C) by First Choice Technology, Inc. (U-6948-C) is approved subject to IBFA's remittance of all outstanding user fees and surcharges, plus interest owed for late remittances, within 30 days from the effective date of this resolution.

This resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 28, 2016. The following Commissioners approved it:

Timothy J. Sullivan
Executive Director